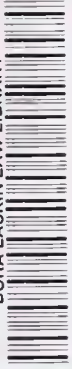


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THEORY OF NEGOTIATION

COURSE READINGS

1996-1997

VOLUME II

Professor Janice Gross Stein
Mr. Philip Siller
Mr. Jeffery Rose

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FACULTY OF LAW
UNIVERSITY OF TORONTO

THEORY OF NEGOTIATION

Week 1-2: What is negotiation? Why Negotiate?

- formal models of negotiation; the zone of agreement and the likelihood of a negotiated outcome; different kinds of negotiations.
- is agreement necessary or important? modelling process and outcomes.

Required Reading:

James K. Sebenius, "Negotiation Analysis: A Characterization and Review," *Management Science* 38 (January 1992), pp. 18-38.

Steven J. Brams, "Preface" and "Negotiations in the Bible," in *Negotiation Games. Applying Game Theory to Bargaining and Arbitration*, pp. xiii-28.

Howard Raiffa, *The Art and Science of Negotiation*, pp. 1-25.

Optional Reading:

"McDonald Container's Ltd," in Peach and Bergman *The Practice of Labour Negotiations*, 3rd ed., 156-192.

Reiter and Swan, *Studies in Contract Law*, Study 8: Reiter, "Contracts, Torts, Relations and Reliance." pp. 236-239 and 259-263.

H.W. Arthurs, et al., *Labour Laws and Industrial Relations in Canada*, 3rd edition, pp. 296-303.

Gunnar Sjostedt, "Negotiations on Nuclear Pollution: The Vienna Conventions on Notification and Assistance in Case of a Nuclear Accident, in Sjostedt *International Environmental Negotiation*, pp. 63-83.

Week 3: Prenegotiation

- Lowering uncertainty; reducing exit costs; definition of the problem; asymmetrical definitions of the problem; framing the negotiating problem; the law as frame; agenda-setting; agreement to negotiate.

Required Reading:

I. William Zartman, "Prenegotiation: Phases and Functions," in Janice Gross Stein, *Getting to the Table: Processes of International Prenegotiation*, pp. 1-17.

Janice Gross Stein, "Getting to the Table: the triggers, stages, functions and consequences of prenegotiation, in *Getting to the Table: Processes of International Prenegotiation*, pp. 239-268.

James B. Atleson, *Values and Assumptions in American Labor Law*, pp. 171-180.

Optional Reading:

Fen Osler Hampson, "Climate Change and Global Warming," in Fen Osler Hampson with Michael Hart, *Multilateral Negotiations. Lessons from Arms Control Trade and the Environment*, pp. 300-342.

Brian W. Tomlin, "The Stages of Prenegotiation: The Decision to Negotiate North American Free Trade," in *Getting to the Table: Processes of International Prenegotiation*, pp. 18-43.

Richard Hyman and Ian Brough, "Mechanisms of Adjustment," in *Social Values and Industrial Relations: A Study of Fairness and Inequality* pp. 62-92.

Moore v. Moore (1980) 14 R.F.L. (2d) (U.F.Ct.) at pp. 63-86.

Esso Petroleum v. Mardon (1976) 1 QB 801.

Week 4-5: The structure of negotiation I: the parties and the relationship

- participants in negotiation; rational or "irrational" players; interests, needs and positions in negotiation; repetitive and single-instance negotiations.

Required Reading:

Dean G. Pruitt and Peter J. Carnevale, "Cognition and Decision Process in Negotiation," in *Negotiation in Social Conflict*, pp. 81-103.

Max H. Bazerman and Margaret A. Neale, "Negotiator Rationality and Negotiator Cognition: The Interactive Roles of Prescriptive and Descriptive Research," in H. Peyton Young, *Negotiation Analysis*, pp 109-129.

Daniel Kahneman, "Reference points, anchors, norms and mixed feelings," *Organizational Behaviour and Human Decision Processes* 51 (1992), pp. 296-312.

Janice Gross Stein, "International Cooperation and Loss Avoidance: Framing the Problem," in Janice Gross Stein and Louis Pauly, eds., in *Choosing to Cooperate: How States Avoid Loss*, pp. 2-34.

Bruce Chapman, "The Rational and the Reasonable: Comparison of Social Choice Theory and Legal Adjudication," pp. 1-114.

Barbara C. Bedont, "Gender Differences in Negotiations and the Doctrine of Unconscionability in Domestic Contracts," in *Canadian Family Law Quarterly*, pp. 21-44.

Optional Reading:

Stephen E. Weiss, "Negotiating with 'Romans'" Parts I and II, *Sloan Management Review*, (Winter 1994) No. 2 and 3.

Robert Presthus, *Elite Accommodation in Canadian Politics* pp. 28-37.

Michael Hart, "The GATT Uruguay Round, 1986-1993," in Fen Osler Hampson with Michael Hart, *Multilateral Negotiations. Lessons from Arms Control, Trade and the Environment*, pp.168-201.

Robert Putnam, "London I and Bonn I, 1977-78," in *Hanging Together: Cooperation and Conflict in the Seven-Power Summits*, pp. 62-94.

Jonathan Brock, "Fire Fighter Negotiations in Seabury Massachusetts," in *Bargaining Beyond Impasse*, pp 117-135.

Raymond A Friedman, "Reshaping Roles and Rituals: Midwestern University," in *Front Stage Back Stage: The Dynamic Structure of Labor Negotiations*, pp 177-206.

Haskell v. Letourneau (1979) 100 D.L.R. (3d) (Co. Ct), at pp. 329-345.

Brewer V. Chrysler Canada Ltd. (1977) 3 W.W.R. 69.

Week 6: Agents in negotiation

- negotiation through agents; agents as allies; the language of rights, obligations and equity; lawyers duties and the demands of the client.

Required Reading:

Kathleen Valley et. al., "Agents as Information Brokers: the effects of information disclosure on negotiated outcomes," *Organizational Behaviour and Human Decision Processes*, 51 (March 1992), pp. 220-36.

James K. Sebenius and David Lax, "Negotiating Through an Agent," *Journal of Conflict Resolution* 35 (September 1991), pp. 474-93.

Warren Lehman, "The Pursuit of a Client's Interest," *77 Michigan Law Review*, pp. 1078.

Ronald J. Gilson and Robert H. Mnookin. "Cooperation and Competition in Litigation: Can Lawyers Dampen Conflict?" in Kenneth Arrow et al., *Barriers to Conflict Resolution*, pp. 184-211.

Optional Reading:

Law Society Act, R.S.O. 1990, C. L-8 as amended: ss. 34, 37, 38, 62(1). 12, 63.1.

Rules of the Law Society of Upper Canada

Rule 3, Commentary 1-4, 9, notes 1-5, 9.

Rule 8, Commentary 1-4, nn. 1-5.

Rule 10, Commentary 1-7, nn. 1-17.

Rule 14, Commentary 1-7, nn. 1-8.

Primerano v. Primerano (1982) 30 R.F.L. (2d) (Co. Ct.) at pp. 286-292.

Douglas G. Gifford, "The Synthesis of Legal Counselling and Negotiation Models," *UCLA Law Review* (1986-87) 811. Introduction and s. 11B.

Week 7-8: The structure of negotiation II: problems and issues

- multi and single issue negotiations; issues on and off the table; packaging or unpacking issues.

Required Reading:

James K. Sebenius, "Negotiation arithmetic: adding and subtracting of issues and parties," *International Organization* 37 (Spring 1983), pp. 281-316.

Ralph L. Keeney and Howard Raiffa, "Structuring and Analyzing Values for Multiple-Issue Negotiations," in H. Peyton-Young, *Negotiation Analysis*, 131-151.

Howard Raiffa, *The Art and Science of Negotiation*, pp. 131-47.

Optional Reading:

Janice Gross Stein, "The Political Economy of Security Arrangements: The Linked Costs of Failure at Camp David," in Harold K. Jacobson and Robert D. Putman eds., *Double-Edged Diplomacy: International Bargaining and Domestic Politics*, pp. 77-103.

Fen Osler Hampson. "Conventional Arms Control: Failure and Success," in Fen Osler Hampson with Michael Hart, *Multilateral Negotiations. Lessons from Arms Control, Trade and the Environment*, pp. 94-121.

Patrick J. Monahan, *Meech: The Inside Story* pp. 49-54, 133-136, 198-237.

J. Kervin, "Case Study: Negotiations at Canadian Switch," in A. Sethi, *Collective Bargaining in Canada*, pp. 214-232.

Lac Minerals Ltd. v. International Corona Resources Ltd. (1989) 2 S.C.R. 574.

Week 9: The structure of negotiation III: bargaining resources

- information and expertise; capacity to sustain the costs of negotiation; bargaining advantage; perception and misperception.

Required Reading:

Thomas Beisecker, "Knowledge Versus Ignorance as Bargaining Strategies: The Impact of Knowledge about Other's Information Level," *Social Science Journal* 26 2 (1989), pp. 161-172.

Samuel B. Bacharach and Edward J Lawler, "Power Dependence and Power Paradoxes in Bargaining," *Negotiation Journal*, April 1986, pp. 167-75.

James Lax and James Sebenius, *The Manager as Negotiator: Bargaining for Cooperation and Competitive Gain*, pp. 88-153.

Optional Reading:

Harrison Wagner, "Economic Interdependence, Bargaining, Power and Political Influence," *International Organization* 42, 3 (Summer 1988), pp. 461-83.

Andrew Moravcsik, "Negotiating the Single European Act," in *International Organization* (1991) 45 (1), pp. 41-83.

John Kervin, Morley Gunderson and Frank Reid, "The Stelco Dispute" in *Two Case Studies of Strikes: Final Report, March 1984*.

Ablaka v. Ablaka (1991) 32 R.F.L. (3d) (U.F.Ct.) at pp. 369-380.

Underwood v. Underwood (1994) 113 D.L.R. (4th) (Gen. Div.) at pp. 571-578.

Sakmar v. Sakmar (1984) 38 R.F.L. (2d) (U.F.Ct.) at pp. 366-370.

Week 10-11: Strategies of negotiation

- ultimata, threats, warnings, promises and commitments; "claiming" value and "creating" value; integrative and distributive bargaining; communication and static.

Required Reading:

Barry O'Neill, "Conflictual Moves in Bargaining: Warnings, Threats, Escalations and Ultimatums," in H. Peyton Young, ed., *Negotiation Analysis*, pp. 87-107.

Dean G. Pruitt and Peter J. Carnevale, "Social Norms and their Impact on Negotiation," in *Negotiation in Social Conflict*, pp. 119-129.

Thomas Schelling, "Essay on Bargaining," in *The Strategy of Conflict*, pp. 21-52.

Optional Reading:

Daniel Druckman, "Negotiating Military Base Rights," in *Journal of Conflict Resolution*, (June 1986) Vol. 30, No. 2, pp.327-360.

Richard E. Walton, Joel E. Cutcher-Gershenfeld and Robert B. McKersie, "The Automobile Supply Industry: A Fiercely Competitive Context," in *Strategic Negotiations: A Theory of Change in Labor-Management Relations*, pp. 117-166.

Jon Elster, "Strategic Uses of Argument," in K. Arrow et. al eds., *Barriers to Conflict Resolution*. pp. 236-257.

Lloyds Bank v. Bundy (1974) 3 All ER 757.

Week 12: "Good Faith" in Negotiation

Required Reading:

Brian Bemmels, E.G. Fisher and Barbara Nyland, "Canadian-American Jurisprudence on 'Good Faith' Bargaining," in *Relations Industrielles*. Vol 41 No. 3 (1986) pp. 596-620.

G. Richard Shell, "When is it Legal to Lie in Negotiations?" *Sloan Management Review* (Spring 1991) pp. 93-101.

Edward Belobaba, "Good Faith in Canadian Contract Law," in Law Society of Upper Canada, *Commercial Law* (1985) pp. 73-92.

Max H. Bazerman and Margaret A. Neale, "The Role of Fairness Considerations and Relationships in a Judgmental Perspective of Negotiation," Kenneth Arrow et. al., *Barriers to Conflict Resolution*, pp. 86-106.

Optional Reading:

George W. Adams, *Canadian Labour Law: A Comprehensive Text*, pp. 569-588.

Uniform Commercial Code, secs. 1-201 (definitions of good faith, agreement and contract) and 1-203.

The Labour Law Casebook Group, Industrial Relations Centre, Queens University, *Canadian Union of Public Employees and Labour Relations Board (Nova Scotia)* (1983) 1 D.L.R. (4th) 1 (S.C.C.) at 19-26 in *Labour Law: Cases, Materials and Commentary*, pp. 464-470.

The Labour Law Casebook Group, Industrial Relations Centre, Queens University, *United Steelworkers of America and Radio Shack*, (1980) 1 C.L.R.B.R.99 (O.L.R.B.) at 123-128 in *Labour Law: Cases, Materials and Commentary*, pp. 455-462.

Canada Steamship Lines Ltd. v. Canadian Pacific Ltd. (1979) 7 BLR 1 (O.H.C. J.)

Feldman v. Allegheny Intern Inc., 850 F.2d 1217 at pp. 1217-1226.

Week 13: Clearing the Table

- the capacity to deliver; breakdown and closure; outcome implementation and closure.

Required Reading:

Bryan Downie, "When Negotiations Fail: Causes of Breakdown and Tactics for Breaking the Stalemate," *Negotiation Journal*, (April 1991), pp. 175-86.

Optional Reading:

Gilles Beausdeil, "History of the Strike at Asbestos," (for background) and Joint Authorship "History of the Negotiations," (for specifics of the process, breakdown and settlement) in Pierre Elliot Trudeau ed., and James Boake, trans., *The Asbestos Strike*, pp. 143-203.

Janne E. Nolan, "The US-Soviet Conventional Arms Transfer Negotiations," in Alexander L George, Philip J Farley, Alexander Dallin, *US-Soviet Security Cooperation: Achievements, Failures, Lessons*, pp. 510-523.

Barry Eichengreen and March Uzan, "The 1993 World Economic Conference as an Instance of Failed International Cooperation," in Harold K. Jacobson and Robert D. Putnam eds., *Double-Edged Diplomacy: International Bargaining and Domestic Politics*, pp. 171-206.

